

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TWENTIETH CENTURY FOX FILM CORP., *et al.*

Plaintiffs,

v.

MEGAUPLOAD LIMITED, *et al.*,

Defendants.

No. 1:14cv362
(LO / IDD)

**CONSENT MOTION OF DEFENDANT MEGAUPLOAD LTD.
FOR A STAY PENDING A PARALLEL CRIMINAL PROSECUTION**

Defendant Megaupload Limited (“Megaupload”) hereby moves for a continuation of the stay enter in this action and, in support thereof, states as follows:

1. Plaintiffs filed this action on April 7, 2014, alleging claims for direct and secondary copyright infringement (Dkt. No. 1, *Complaint*). The defendants in this civil action are Megaupload, Vestor Limited (“Vestor”), Kim Dotcom (“Dotcom”), Mathias Ortmann (“Ortmann”), and Bram van der Kolk (“van der Kolk”), all of whom are foreign nationals (*Id.*, *Complaint* ¶¶ 19 – 23).

2. Megaupload and the other defendants in this civil action also have been indicted for racketeering, criminal copyright infringement, and other alleged crimes. *United States v. Kim Dotcom, et al.*, No. 1:12-cr-00003-LO (E.D. Va. filed Jan. 5, 2012) (“*Criminal Action*”). The *Criminal Action* is still pending, and none of the individual defendants have been extradited (although extradition proceedings have been underway for several years).

3. Defendants Megaupload, Dotcom, Vestor, Ortmann, and van der Kolk also have been sued in two other civil actions in this Court related to the same conspiracy alleged in the

Criminal Action. Microhits, Inc. v. Megaupload, Ltd., No. 1:12cv327-LO/IDD (E.D. Va. filed Mar. 21, 2012) (“*Microhits Action*”); *Warner Music Group Corp. v. Megaupload, Ltd.*, No. 1:14cv374-LO/IDD (E.D. Va. filed Apr. 10, 2014) (“*Warner Music Action*”). All three of these civil actions have been stayed virtually since filing, and recently the *Microhits Action* was dismissed. In particular, this action has been stayed by several prior orders (Dkt. Nos. 31, 42, 45, 47, 52, 60, 68, 70, 72, 74 & 79).

4. In opposition to Megaupload’s recent stay motions, Plaintiffs expressed concerns about the preservation of certain digital evidence in the hands of Cogent Communications, Inc. (the “Cogent Data”) (Dkt. No. 50). Thereafter, some preservation issues materialized. (Dkt. Nos. 53 & 54.) The parties in this action and the *Warner Music Action*, as well as counsel for the United States in the *Criminal Action*, were then ordered to meet and confer regarding the preservation of the Cogent Data (Dkt. No. 58). Counsel met and conferred extensively to negotiate the terms of a preservation order. Ultimately, the parties agreed to most, but not all, terms, and Plaintiffs moved for entry of a preservation order (Dkt. No. 61), to which Megaupload responded with its own proposed form of order (Dkt. No. 65). Upon consideration of the parties’ filings, the Court entered the form of preservation order submitted by Plaintiffs. (Dkt. No. 66.)

5. With the preservation order in place, and there being no other objection, Defendant Megaupload hereby moves the Court to enter the attached proposed order, continuing the stay in this case for an additional six months, subject to the terms and conditions stated in the proposed order.

6. Plaintiffs consent to continuation of the stay on the terms and conditions stated in the proposed order.

The parties do not seek oral argument on this motion.

WHEREFORE, Defendant Megaupload Ltd. respectfully requests that the Court enter the attached proposed order.

Dated: September 30, 2019

Respectfully submitted,

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Counsel for Defendant Megaupload, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2019, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users:

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